

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CV. NO. 06-00629 DAE
)
Plaintiff,)
)
vs.)
)
ABRAHAM NGUYEN MARTIN,)
)
Defendant.)
_____)

ORDER DENYING AS MOOT DEFENDANT'S MOTION FOR
REQUEST OF PROCEEDING TRANSCRIPT

Pursuant to Local Rule 7.2(d), the Court finds this matter suitable for disposition without a hearing. After reviewing Defendant's motion and supporting memoranda, the Court DENIES Defendant's Motion as moot.

DISCUSSION

Defendant filed a motion to vacate, set aside, or correct his sentence under Title 18, United States Code, Section 2255 based on, inter alia, ineffective assistance of counsel (§ 2255 Motion). Defendant now seeks to obtain a free transcript of court proceedings in order to pursue his § 2255 Motion.

In Britt v. North Carolina, the Supreme Court held that an indigent defendant's request for a free transcript depends on the determination of a two

factor balancing test: (1) the value of the transcript to the defendant in connection with the proceeding for which it is sought, and (2) the availability of alternative devices that would fulfill the same function. 404 U.S. 226, 227 (1971).

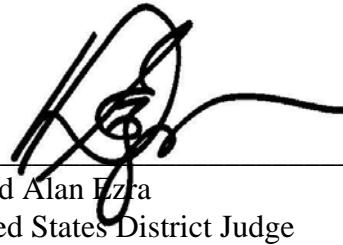
Based on Defendant's motion, the only relevant and available transcript necessary for Defendant to pursue his § 2255 Motion is the sentencing hearing transcript. This transcript was included as Exhibit D in the Government's opposition memorandum to Defendant's § 2255 Motion. Defendant has already received a copy of this transcript.

CONCLUSION

Therefore, without deciding the issue of indigence, the Court DENIES Defendant's Motion as moot.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, June 12, 2007.



David Alan Ezra
United States District Judge